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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **O.M.P. (COMM) 338/2022 & I.As. 12789-90/2022, 12792/2022**

M/S MAHAMAYA EXPORTS PVT LTD Petitioner
Through: Mr. Rajan Chaudhary, Advocate.

versus

M/S BDR BUILDTECH PVT LTD AND ANR Respondents
Through: Mr. Manish Vashisht, Senior
Advocate with Mr. Shantanu
Parashar, Mr. Nitin Bajaj and Ms.
Deeksha Goswami, Advocates,

+ **OMP (ENF.) (COMM.) 9/2019 & I.A. 6722/2019**

BDR BUILDTECH PVT. LTD Decree Holder
Through: Ms. Diksha Goswami, Advocate.

versus

MAHAMAYA EXPORTS PVT.LTD Judgement Debtor
Through: Mr. Rajan Chaudhary, Advocate.
Mr. Vansh Kapoor, Advocate for
JD-3.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **09.04.2024**

O.M.P. (COMM) 338/2022

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”], has been filed in the name of Mahamaya Exports Pvt. Ltd., challenging an award dated 06.07.2018, passed by a learned sole arbitrator.



2. The petition is supported by an affidavit of Mr. Vashist Kumar Goyal, in his capacity as a Director of the petitioner-company.
3. The petitioner has also filed I.A. 12790/2022 for condonation of delay of 1450 days in filing of the petition, which was filed on 29.07.2022. By way of I.A. 12792/2022, the petitioner seeks condonation of delay of 30 days in refiling.
4. The limitation period for filing a petition under Section 34 of the Act is three months, which is extendable by a maximum period of thirty days under the *proviso* to Section 34(3) of the Act. The judgments of the Supreme Court *inter alia* in *Union of India v. Popular Construction Co.*, [(2001) 8 SCC 470] and *Simplex Infrastructure Ltd. v. Union of India* [(2019) 2 SCC 455], make it clear that the Court has no jurisdiction to condone the delay in filing of a petition under Section 34 of the Act, beyond the period of 30 days. The present petition has admittedly been filed well beyond the aforesaid period.
5. The application [I.A. 12790/2022] states that the “appellant” never received the copy of the impugned award passed by the learned arbitrator, and only found out about the award on 26.05.2022 from the enforcement proceedings filed by the respondent. Mr. Rajan Chaudhary, learned counsel for the petitioner, submits that the other two directors of the petitioner – company are absconding, and that Mr. Goyal had no knowledge of the award.
6. Mr. Manish Vashisht, learned Senior Counsel for the respondent, points out that in the enforcement proceedings [OMP(ENF)(COMM) 9/2019], the petitioner – company, which was the judgment debtor therein, has entered appearance as long ago as on 08.05.2019, and no



contention has been raised at any stage that the award was not received. There were, in fact, 11 dates of hearing in the enforcement proceedings before the filing of the present petition under Section 34 of the Act. Mr. Manish Vashisht states that the respondent also served the award upon Mr. Goyal by e-mail on 09.04.2021.

7. It was put to Mr. Chaudhary that he has to clarify as to whether the petitioner's position is that the company had not received the impugned award, or only that Mr. Goyal was not aware of the impugned award at the relevant time. Upon taking instructions, Mr. Chaudhary states that Mr. Goyal does know whether the award was received by the company or not, at the relevant time, but Mr. Goyal was not aware of the same.

8. It is evident that the contents of the application for condonation of delay have therefore been made recklessly, to the extent that they refer to the company having not received the award. As Mr. Chaudhary has been instructed not to press this particular allegation, the foundation of the application for condonation of delay is lost. It bears repetition that the company was the respondent in the arbitral proceedings, and is the petitioner herein. Whether a particular director did or did not have knowledge of the award is immaterial to the computation of limitation for the present petition. In any event, Mr. Chaudhary states that Mr. Goyal also received the award by email on 09.04.2021. The contents of the petition and the applications are thus admittedly misleading.

9. That being the position, the Court has no jurisdiction to condone the delay of over 1400 days in filing of the petition.

10. The application for condonation of delay [I.A. 12790/2022] is, therefore, dismissed and O.M.P.(COMM) 388/2022 is rejected. All



pending applications are also disposed of.

OMP (ENF.) (COMM.) 9/2019

List on 06.08.2024.

PRATEEK JALAN, J

APRIL 9, 2024

“Bhupi/pv”/